

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1284 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

KANUBHAI LALJIBHAI THAKKAR

Versus

STATE OF GUJARAT

Appearance:

MR MANOJ POPAT for Petitioners

MR SA PANDYA PUBLIC PROSECUTOR for Respondent No. 1

MR KH DAMANI for Respondent No. 2

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 17/10/96

ORAL JUDGEMENT

The present respondent no. 2 filed criminal complaint under section 420, 406 and 114 of the Indian Penal Code against the petitioner before the Gomatiipur Police Station. Reading the complaint, it appears that there is a dispute between the parties with regard to handingover of the truck in question and to settle the account. The grievance of the respondent no. 2 is to the effect that as the petitioners have not handedover

the Truck and did not pay Rs 21000/, the petitioners have committed a breach of trust, cheating and thereby the offence under section 420 and 406 of the Indian Penal Code. It appears that the said complaint was investigated by the Police and has submitted a report for the purpose of granting B-Summary, as according to the police, no offence is committed by the petitioners. However, the learned Magistrate after hearing the parties issued bailable warrant against the petitioners by entertaining the complaint by his order dated 31.8.1988. The petitioners have challenged the said order in the present petition under Article 226 of the Constitution of India.

Having heard Mr. Popat learned advocate for the petitioners and after perusing the impugned order passed by the learned Magistrate, I am of the view that the learned Magistrate has found number of faults with regard to the investigation carried out by the police. The learned Magistrate has after having given cogent and convincing reasons, prima-facie found substance in the allegations made in the complaint and, therefore, has registered an offence against the petitioners. The learned Magistrate is not bound to accept the report submitted by the police for granting the B-Summary as prayed for as the learned Magistrate is required to consider the allegations made in the complaint as well as other relevant material and to find out as to whether a prima-facie case is made out against the accused or not. Having considered the present case on the basis of available material on record, it cannot be contended that there is no case against the petitioners. Apart from this, this is not a case wherein this Court would exercise its inherent powers under Article 226 of the Constitution of India by quashing and setting aside the order of process issued by the learned Magistrate. It is a settled principle of law that the order issuing the process is an interim order and not a judgment. It can be varied or recalled provided the case is made out for the same. In view of this, I see no merits in the present petition.

In the result, the petition fails and is dismissed. The rule is discharged. Ad interim relief stands vacated.

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